IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Arbitration Case No.41 of 2006

Date of Decision: 12 - 11 - 2007

M/S Bharat Enterprises and another **....Petitioners**

through Mr.Chetan Mittal, Advocate

v.

Union of India and others **....Respondents**

through Mr.Ashwinie Kumar Bansal, Advocate

CORAM: HON'BLE MR.JUSTICE VIJENDER JAIN, CHIEF JUSTICE

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1. Whether Reporters of Local Newspapers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

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VIJENDER JAIN, CHIEF JUSTICE (ORAL)

The petitioners have filed this petition invoking Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator. The arbitration clause is admitted between the parties. However, the controversy revolves around an affidavit given by the petitioners which was to the following effect:-

> "1. That I hereby withdraw my letter bearing No.NIL dated 25.2.2003 for appointment of Arbitrator and 1165 (not legible) of claim in respect of C.A.No.GEAF/CHD.31/2001-02 for the work of certain repairs to Bath Room and other allied works and painting to

C.G.I. Sheets to Hanger in technical area in 12 Wing Air Force, Chandigarh.

2. That I will not invoke Arbitration/ raised disputes at any stage in future in respect of C.A.No.GEAF/CHD.31/2001-02 for the work of certain repairs to Bath Room and other allied works and painting to C.G.I. Sheets to Hanger in technical area in 12 Wing Air Force, Chandigarh."

Learned counsel for the petitioners has contended that the affidavit and the undertaking were withdrawn by the petitioners vide letter dated 14.11.2003 which is at page 49 of the paper-book. The said letter is to the following effect:-

"Reference further to our letter dated 21-5-2003, undertaking dated 12-9-2003 and Affidavit dated 24-5-2003.

As you have failed to make payment of our final RAR and Final Bill inspite of our assurance that payments will immediately be released on submission of Affidavit and undertaking, we are left with no alternative but to withdrawn our Affidavit dated 24-5-2003 and undertaking dated 12-9-2003.

In view of above we hereby invoke the arbitration clause of the contract and call upon you to make full payment of our claims listed in Appendix `A' to our letter dated 25-2-2003 amended vide our letter dated 7-4-2003.

Please treat it as final notice for arbitration as requiried vide condition 70 of IAFW-2249 General Condition of Contract forming part of contract agreement."

Mr.Bansal, learned counsel appearing on behalf of the respondents has contended that once the petitioners had given the affidavit and the undertaking that they would not press for invoking of the arbitration clause, no relief could be granted in the present petition. On the other hand, Mr.Mittal, learned counsel

appearing for the petitioners says that the respondents were always in a dominant position and as no amount was paid by the respondents, the petitioners gave the affidavit and the undertaking, which they later on withdrew.

I have heard the arguments advanced by learned counsel for the parties. The question for determination is whether the undertaking not to press the arbitration clause and the affidavit which was given by the petitioners to the respondents, was operative or not, as for that purpose I asked the respondents as to when the payment pursuant to the bills raised by the petitioners was made by them. Counsel for the respondents states that payment of Rs.100358/- had been made on 25.11.2003 i.e. after the letter dated 14.11.2003 withdrawing the affidavit and the undertaking given by the petitioners to the respondents, had been written by the petitioners. As the affidavit and the undertaking had been withdrawn and also in view of the fact that the payment had been made after the withdrawal of the undertaking as well as the affidavit, I am of the considered view that the dispute between the parties, still subsists. It is no more *res integra* that if a dispute subsists, the matter has to go for arbitration under the arbitration agreement.

In view the foregoing position, I appoint Shri P.C.Singhal (retired District and Sessions Judge) as the sole Arbitrator to adjudicate upon all the disputes between the parties.

The Arbitrator shall fix his own fee.

The intimation of appointment be sent to the Arbitrator.

Parties to appear before the Arbitrator on 8.12.2007 at 4.00 P.M.

Petition stands disposed of.

(VIJENDER JAIN)
CHIEF JUSTICE

November 12, 2007

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